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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

O.A.No.694/99

Date of Order:25.8.99

BETWEEN:

Gogarla Durgaiah ..Applicant.

AND

Superintendent of Post Offices,
Adilabad Division,
Adilabad District. ..Respondents.

Counsel for the Applicant ..Mr.G.Chandraiah

Counsel for the Respondents .. Mr.P.Phalguna Rao

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR: MEMBER(JUDL.)

O R D E R

) (As per Hon'ble Shri B.S.Jai
Parameshwar, Member (Judl.)) (

None for the applicant. Heard Mr.P.Phalguna Rao,
learned standing counsel for the respondents. We are
deciding this OA in accordance with Rule 15(1) of
C.A.T.(Procedure) Rules, 1987.

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2. The respondents issued a notification vide memo No.B3-346 dated 30.4.98 inviting applications to fill up the post of EDBPM, Chandaram B.O., A/W Laxetipeta S.O. in Adilabad District. In the said notification the post was reserved for SC community candidate. Subsequently a second notification of even No. dated 30.3.99 was issued without reserving the post for any reserved community candidate.

3. Hence the applicant has filed this OA challenging the notification dated 30.3.99 as violative of Article 14 and 16 of the Constitution of India and for a consequential direction to the respondents to fill up the post of EDBPM, Chandaram B.O. only from among the candidates belonging to SC community or alternatively to issue a fresh notification to fill up the post of EDBPM by a SC community candidate.

4. The respondents have filed their reply stating that in response to the notification dated 30.4.98 only 2 applications were received within the last date and 4 applications were received after the last date. As the minimum number of applications were not received, following the instructions of the G.D.Posts, New Delhi in letter No.19-4/97 ED & TRG dated 19.8.98, the vacancy was renotified by the impugned notification dated 30.3.99.

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5. In Adilabad division, ^{in 1998}, there was shortfall of representation from S.C. candidates in the BPM cadre. The reservation was to be restricted to 50% of the vacancies notified in any year.

6. That during the current year i.e. in 1999, 14 BPM vacancies were notified and reservations were made for SC category. In page-4 of the reply they have given the details of the reservation and they submit that in the year 1999 there was sufficient representation of S.C. community candidates in the Division. Therefore, the post of EDBPM, Chandaram was ~~shown~~ open to O.C. in the impugned notification dated 30.3.99.

7. The question to be considered is whether the respondents were justified in issuing the notification dated 30.3.99 without reserving it for the S.C. community candidate. The respondents in support of their contention rely upon the letter dated 27.11.97 issued by the Directorate and they submit that the reservation for the reserved community candidate in EDBPM is a post based and further they rely upon the para-4(6) of the letter which reads as follows :-

"The reservation ceiling of 50% should not be violated in any particular year or on the basis of total no. of posts. If in any recruiting unit, there is an excess representation of any of the reserved categories or of the total representation of the reserved categories has already exceeded 50% of the total no. of posts, it shall be adjusted in the future appointments"

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8. The respondents before dereserving any post which was once reserved for a reserved community candidate must ascertain whether there are sufficient number of representations of the reserved community candidates in the division. If the reserved community candidates are filled up in accordance with 15% and 7½% of the total E.D. Agents in the division then the question of reserving a post for the reserved community candidate may not arise. For this they have to take into consideration all the ED Agents not only EDBPMs to consider whether there is sufficient representations of reserved community candidates in the division. As seen from page-4 of the reply, the respondents have not taken into consideration the ED Agents who were working in the division. Even accepting for the moment that the Directorate's letter indicates that the respondents can go in for reservation they should have ascertained the representation of the reserved community candidates in all ED categories in the division. That is the stand taken by the respondents counsel. If out of the total number of ED posts already 15% and 7½% of the reserved community staff is available then there is no need for any further reservation. This point may have to be checked.

9. If there is sufficient representation among the ED Agents in the division, then the impugned

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notification dated 30.3.99 cannot be challenged for not reserving the post ^{to} ~~of~~ SC community candidate.

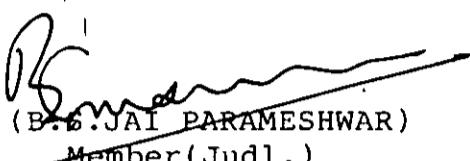
10. Even if there is no pleading in this OA in regard to the **reservation of the vacancies** and the vacancies have already been filled in the year 1998 ^{and that} the reservation rule should be adhered to by the department. The Tribunal has disposed of number of cases pertaining to reservation. The Tribunal is aware of the various rules pertaining to reservation rules. Even in the absence of pleadings when there is a need to consider it, it cannot be said that no direction can be given in this connection. We feel it is not a proper submission. 15% of vacancies are to be filled by the S.C. community candidates in the division.

11. In the result the following directions are given :-

- (a) The respondents shall immediately check the availability of the reserved community candidates in the division to the extent required in the ED staff category.
- (b) On that basis they shall take a decision whether the particular post is to be reserved for SC community.
- (c) If reservation has been followed in accordance with the Supreme Court judgement in the case of R.K.Sabharval v. State of Punjab ^{and others} _{p.1371} (AIR 1995 SC) dated 10.2.95 then the impugned notification dated 30.3.99 stands good.
- (d) If it ^{to be} is not followed then the notification is liable ^{to be} cancelled and a fresh notification has to be issued.

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12. The OA is thus disposed of with no order as to costs.


(B. S. JAI PARAMESHWAR)
Member (Judl.)

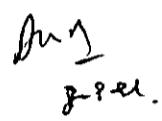

(R. RANGARAJAN)
Member (Admn.)

25.8.99

Dated : 25th August, 1999

(Dictated in Open Court)

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B. S. JAI PARAMESHWAR

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COPY TO :

1. HDHND
2. KRRN M (A)
3. HSSJP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H.NASIR:
VICE - CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR.B.S.JAI PARAMBHAR:
MEMBER (JUDL)

* * *
DATE OF ORDER: 25/8/99

MA/BA/CP. NO.

IN
DA. NO. 694/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALL DIED

CP. CL OS'D

RA. CL OS'D

CA. CL OS'D

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

(6 copies)

केन्द्रीय अधारित अधिकार परिषद
Central Administrative Tribunal
प्रेषण / DESPATCH

15 SEP 1999

दैरेशन अधिकारी
HYDERABAD BENCH